



STATE OF INDIANA

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March 11, 2015

Mr. Stan Frank
1426 Riddle Road
Spencer, IN 47460

*Re: Formal Complaint 15-FC-41; Alleged Violation of the Open Door Law by the
Owen County Board of Commissioners*

Dear Mr. Frank,

This advisory opinion is in response to your formal complaint alleging the Owen County Board of Commissioners ("Board"), violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Board has responded to your complaint via Counsel, Mr. Richard W. Lorenz, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor February 6, 2015.

BACKGROUND

Your complaint dated February 6, 2015 alleges the Owen County Board of Commissioners violated the Open Door Law (Ind. Code § 5-14-1.5 *et. al.*) by voting during an executive session

You allege the Board conducted an executive session regarding prospective employees/appointees and then voted on those meetings before holding an open meeting on February 2, 2015. You claim you were told by a Board member the votes would not be disclosed as to the appointees.

The Board responded to your complaint by explaining the timeline of the events preceding the February 2, 2015 meeting and arguing no Open Door Law violation occurred. On January 6, 7, and 28, 2015, the Board held properly noticed executive sessions under Ind. Code § 5-14-1.5-6.1(b)(5) and (b)(9) to interview prospective employees, some of whom were current employees. No votes were taken; however, there appears to have been discussions of the job performance of current employees (as allowed by subsection (b)(9)).

The Board provided the minutes of the February 2, 2015 meeting which does indeed indicate the votes for the employees.

ANALYSIS

It is the intent of the Open Door Law (ODL) the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. See Ind. Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. See Ind. Code § 5-14-1.5-3(a).

Ind. Code § 5-14-1.5-6.1 authorizes the use of executive sessions in certain narrow circumstances. Ind. Code § 5-14-1.5-6.1(b)(5) and (b)(9) allows the interviews of prospective employees and discussion of job performance of current employees respectively. No final action or votes may be taken during executive session and secret ballots are disallowed under Ind. Code § 5-14-1.5-3(3)(b).

Your complaint alleges a council member told you votes of the employee appointments would not be disclosed, however, the minutes of the meeting clearly indicate the votes. If the votes were predetermined in an executive session this is a violation of the Open Door Law. Based on the evidence provided, there is no evidence a secret vote took place in an executive session.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping horizontal line underneath.

Luke H. Britt
Public Access Counselor

Cc: Mr. Richard W. Lorenz, Esq.